IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.36 OF 1998

The Commissioner of Income Tax
Kolhapur .. Applicant.

V/s.

Shri Mahakali Sahakari Sakhar
Karkhana Ltd., Rajaramnagar .. Respondent.

Mr.A.S. Rao with Mr.Pankaj Kapoor for the applicant.

Mr.S.N. Inamdar with Mr.P. Vaidya for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 12TH APRIL, 2005.

P.C. :

1. Heard the learned counsel for the parties. The Tribunal has referred following questions for the opinion of this Court, reading as under :

> Whether on the facts and in the circumstances of the case the ITAT relying on the decision of its Special Bench in the case of Shri Chhatrapati SSK Ltd. (198 ITR 78 - AT) was right in deleting the following additions by holding that the various funds/deposits collected by the assessee society out of the sugarcane purchase price payable to the cane growers are not trading receipts of the assessee ?
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> | | |
> |---|---|
> | 1. Non-refundable deposits | Rs.19,99,620 |
> | 2. C.M. Relief fund | Rs. 2,62,386 |
> | 3. Earth quake fund | Rs. 6,55,902 |
> | 4. Small savings | Rs. 1,64,664 |
> | 5. Cane development fund | Rs.20,03,747 |
> | 6. Area development fund | Rs.16,17,617 |

7. Hutment fund	Rs.	21,876
8. Water resources fund	Rs.	13,125

2. In so far as all other items except cane development fund and area development fund are concerned, the issue is covered by the decision of the Apex Court in the case of **Siddheshwar S.S.K. Ltd. V/s. CIT [(2004) 270 ITR 1 (SC)]** in favour of the assessee and against the revenue. So far as Cane Development Fund and area development fund are concerned, the issues will have to be referred back to the Tribunal for consideration afresh as per the judgment of the Apex Court in the case of Siddheshwar S.S.K. Ltd. (supra) as such the said issues stand remitted back to the Tribunal for consideration afresh.

3. The reference is disposed of in the above terms with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)